

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**January 13, 2009**

**The Rhode Island Ethics Commission held its 1st meeting of 2009 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 13, 2009, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair Richard E. Kirby**

**Ross Cheit, Vice Chair Deborah M. Cerullo SSND**

**J. William W. Harsch, Secretary\* Edward A. Magro**

**James V. Murray**

**Also present were William J. Conley, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross and Peter J. Mancini.**

**At 9:07 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on December 16, 2008. Upon motion made by Commissioner Magro**

**and duly seconded by Commissioner Cerullo, it was**

**VOTED: To approve minutes of the Open Session held on December 16, 2008.**

**ABSTENTIONS: James V. Murray and Richard E. Kirby.**

**The next order of business was that of advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Dwight T. Farrar, a member of the Scituate Town Council. Staff Attorney Gramitt presented the Commission Staff recommendation.**

**The Petitioner stated that he had asked the Town Solicitor, David M. D'Agostino, to review the draft advisory and further stated that in a recent closed session of the Town Council, when the issue of teacher contracts came up, he recused. In answer to Commissioner Cheit, the Petitioner stated that he had previously requested an advisory opinion regarding the same issue in 2005, but it was subsequently withdrawn because he was informed that it was moot. The Petitioner further stated he was making the current request out of an abundance of caution and in consideration of the fact that he recently paid a \$1,500.00 fine on another matter. In response to Commissioner Cheit, Staff Attorney Gramitt clarified that an advisory opinion did not issue**

to the Petitioner in 2005. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Dwight T. Farrar, member of the Scituate Town Council.

The next advisory opinion was that of Charles A. Collins, a Scituate Town Council member. \*Commissioner Harsch arrived at 9:20 a.m.. Staff Attorney DeVault presented the Commission Staff recommendation. In response to Chair Binder, Staff Attorney DeVault stated that a sentence could be added to the advisory, specifying that the Petitioner would also be prohibited from voting on school busing matters generally, given the potential impact on the two other bus companies currently serving the school district. Commissioner Cerullo inquired if the Petitioner understood the phrase “matter by matter analysis” and the implication that the phrase puts the onus on him to determine when to recuse. The Petitioner stated that it was his understanding that he must recuse on any matters involving his employer specifically or school district busing generally, but that he is not prohibited from voting on the bottom line school budget. In response to Commissioner Kirby, the Petitioner stated that Collins Bus does not provide busing services to the recreation department.

Upon motion made by Commissioner Magro and duly seconded by Commissioner Cheit, there was discussion. Commissioner Cerullo stated that while the language in the draft advisory was broad, she

**was still concerned about the appearance of impropriety. In response to Chair Binder, Commissioner Cerullo stated that she did not have any proposed changes to the language. On the original motion, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Charles A. Collins, a member of the Scituate Town Council.**

**ABSTENTIONS: J. William W. Harsch.**

**The next advisory opinion was that of Harriet Powell, a North Kingstown Planning Commission member. Staff Attorney DeVault presented the Commission Staff recommendation. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Harriet Powell, a member of the North Kingstown Planning Commission.**

**The next advisory opinion was that of Michelle Cole, a member of the Chariho School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Michelle**

**Cole, a member of the Chariho School Committee**

**The next order of business was an amendment to Advisory Opinion No. 2008-23, previously issued to Robert La Fazia. Staff Attorney DeVault presented the Commission Staff recommendation. In response to Commissioner Cheit, Staff Attorney DeVault confirmed that she had spoken with the Petitioner, who represented to her that he had not heretofore performed any repairs to municipal vehicles, nor did he have any intention of doing so, but simply requested that he be sent a copy of the amended advisory opinion for his records. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an amended advisory opinion, attached hereto, to Robert LaFazia, a member of the Johnston School Committee.**

**At approximately 9:37 a.m., upon motion made and duly seconded, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:**

**a.) Motion to approve minutes of Executive Session held on December 16, 2008.**

**b.) In re: Susan D. Menard, Complaint No. 2008-1**

**c.) In re: Brian R. Remy, Complaint No. 2008-7**

**d.) William V. Irons v. Rhode Island Ethics Commission,  
Superior Court C.A. No. 07-6666**

**e.) Charles Mauti v. John Scuncio, et al.,  
U.S. District Court C.A. No. 08-54S**

**f.) Jason E. Ferrell v. Frank Caprio, Jr., et al.,  
U.S. District Court C.A. No.08-378S**

**g.) Motion to return to Open Session.**

**The Commission returned to Open Session at approximately 11:13 a.m. The next order of business was a motion to seal minutes of the Executive Session held on January 13, 2009. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on January 13, 2009.**

**Chair Binder reported that the Commission approved minutes of the Executive Session held on December 16, 2008, and received updates on the litigation matters of William V. Irons v. Rhode Island Ethics**

**Commission, Charles Mauti v. John Scuncio, and Jason E. Ferrell v. Frank Caprio, Jr. Chair Binder also reported that the Commission had approved settlements in the matters of In re: Susan D. Menard, Complaint No. 2008-1 and In re: Brian R. Remy, Complaint No. 2008-7.**

**The next order of business was a discussion of the Complainant's role in the complaint process. Staff Attorney Gramitt presented a memorandum on the history of the pertinent statutory and regulatory provisions. Commissioner Cheit thanked Staff Attorney Gramitt for the excellent memo, but noted that it did not address the Complainant's presence at Executive Session proceedings. Staff Attorney Gramitt stated that it was unclear whether the Commission had ever reached a consensus on that issue and inquired whether Commissioner Cheit was referring to the Complainant's attendance at Probable Cause or Settlement proceedings. Commissioner Cheit replied that he was concerned about both.**

**In response to Chair Binder, Staff Attorney Gramitt provided a general historical overview of the issue for the newer Commissioners, noting that the current regulations allow the Complainant to attend both Probable Cause and Settlement proceedings and to receive a copy of the proposed Informal Resolution and Settlement in advance of the Commission's hearing. Commissioner Kirby noted that the issue has changed somewhat in light of the fact that the Commission has determined that it is entitled to the exclusive domain of deliberation,**

outside of the presence of the Respondent, Complainant and Commission Staff.

Chair Binder requested that Staff prepare a public policy analysis of the issue for the Commission. Commissioner Cerullo noted that analysis could include the pros and cons of having the Complainant present at one or both proceedings. Commissioner Cheit noted that Phil West, the former Executive Director of Common Cause, had felt strongly about the issue. In response to Chair Binder, Staff Attorney Gramitt clarified that the Commission would want the public policy paper in advance of any workshop allowing for public comment on the issue.

The next order of business was the Director's Report. Executive Director Willever advised that there are four advisory opinions and six complaints pending, including three non-filing complaints. He informed that one formal APRA request was granted since the last meeting. He reported that the Staff is still spending a significant amount of time on budget and personnel issues. Director Willever reported that the Attorney General's Open Government Summit was being held on January 14, 2009, at 9:30 at the CCRI Warwick campus and that Commissioner Cheit would be speaking on the importance of open government. Director Willever noted that Investigator Steven Branch had resigned to pursue work in the private sector and that he and the Staff continue their efforts to be heard on personnel and budget issues.



**The next order of business was New Business. Chair Binder recognized the Providence Journal editorial regarding the new Web site.**

**At approximately 11:27 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**J. William W. Harsch**

**Secretary**